

Application No.: 10/803,153
Amendment and Response dated March 15, 2007
Reply to Office Action of December 20, 2006
Docket No.: 760-243 CON II
Page 7

Amendments to the Drawings:

The attached three sheets of drawings include changes to Figures 1-8. These three sheets, which include Figures 1-8, replace the original three sheets of drawings including Figures 1-8. In Figures 1-8, previously omitted element numbers have been added.

Attachment: Replacement Sheets 1/3, 2/3 and 3/3

Annotated Sheets 1/3, 2/3 and 3/3 Showing Changes

Application No.: 10/803,153
Amendment and Response dated March 15, 2007
Reply to Office Action of December 20, 2006
Docket No.: 760-243 CON II
Page 8

Remarks/Arguments:

Introduction

Claims 1 and 3-18 are pending. Claims 1, 9, 11, 14 and 17 have been amended to further describe the thin wall graft members of the present invention. Support for these amendments may be found in originally filed claim 2 and in the specification at page 5, lines 3-10 and page 10, lines 12-20. Claim 2 has been canceled. Claims 2 and 3 have been amended for antecedent basis following the cancellation of claim 2.

The Action objects to the drawings as lacking element numbers. Replacement drawings having the element numbers are provided herein. The element numbering on the Replacement Sheets correspond to those of US Application No. 09/200,317, filed November 25, 1998, now U.S. Patent No. 6,331,191, i.e., the parent nonprovisional application whose contents have been incorporated by reference in the subject application.

No new matter is introduced with these amendments, including the claim amendments and the replacement drawing sheets. Entry of these amendments is respectfully requested.

Double Patenting Rejections

Claims 1 and 3-18 were rejected under the judicially created doctrine of obviousness-type double patenting as allegedly being unpatentable over claims 1-22 of U.S. Patent No. 6,331,191 to Chobotov. Applicants respectfully submit that with the amendments made to the claims herein, the double patenting rejection should be withdrawn. If, however, the examiner maintains the double patenting rejection, Applicant is willing to file a terminal disclaimer upon indication of allowable subject matter pursuant to 35 U.S.C §§ 102 & 103 considerations.

Section 102 Rejections

Claims 1, 3-5, 7-15, 17 and 18 are rejected under 35 U.S.C. §102(e) as allegedly being anticipated by U.S. Patent No. 6,123,722 to Fogarty et al. (hereinafter "Fogarty"). Applicant respectfully traverses.

As acknowledged by the Examiner at page 3 of the Action, Fogarty discloses graft modules that are capable of supporting a bodily lumen. The graft modules of Fogarty are deployed in a slightly overlapping manner to provide a deployed graft capable of supporting a bodily lumen. (See, e.g., Fogarty, Fig. 3).

In contrast, thin wall graft members of the present invention do not individually have sufficient mechanical strength in a deployed state to provide a desired amount of support the patient's body lumen. Only when the thin wall graft members of the present invention are overlappingly deployed is sufficient mechanical strength to provide a desired amount of support the patient's body lumen. Thus, the individual thin wall graft members of the present invention advantageously have lower profiles than the modules of Fogarty.

Thus, Fogarty fails to disclose the claimed features of independent claims 1, 9, 11, 14 and 17 of the subject application. Reconsideration and withdrawal of the rejections of independent claims 1, 9, 11, 14 and 17, and all claims dependent therefrom, are respectfully requested.

Section 103 Rejections

Claims 6 and 16 are rejected under 35 U.S.C. §102(a) as allegedly being unpatentable over U.S. Patent No. 6,123,722 to Fogarty et al. (hereinafter "Fogarty"). Applicant respectfully traverses.

Application No.: 10/803,153
Amendment and Response dated March 15, 2007
Reply to Office Action of December 20, 2006
Docket No.: 760-243 CON II
Page 10

Fogarty fails to teach or suggest that its individual graft modules are not capable of supporting a bodily lumen. Any attempt to modify the teachings of Fogarty to suggest graft modules not being capable of supporting a bodily lumen is hindsight reconstruction. It is well established, however, that hindsight reconstruction of a reference does not present a *prima facie* case of obviousness, and any attempt at hindsight reconstruction using Applicants' disclosure is strictly prohibited. *In re Oetiker*, 24 U.S.P.Q.2d 1443, 1445-46 (Fed. Cir. 1993). Further, one of ordinary skill in the art would not be motivated to so modify the teachings of Fogarty because the resulting device would be inoperable, i.e., the non-overlapping portions of the Fogarty graft modules would not be capable of supporting a bodily lumen, thereby destroying the intent, purpose and function of Fogarty.

Thus, Fogarty fails to teach or suggest the claimed features of independent claims 1, 9, 11, 14 and 17 of the subject application. Reconsideration and withdrawal of the rejections of independent claims 1, 9, 11, 14 and 17, and all claims dependent therefrom, are respectfully requested.

Summary

Therefore, Applicants respectfully submit that independent claims 1, 9, 11, 14 and 17, and all claims dependent therefrom, are patentably distinct. This application is believed to be in condition for allowance. Favorable action thereon is therefore respectfully solicited.

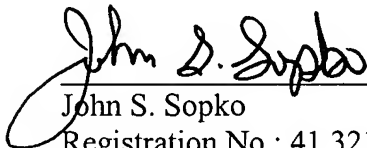
Should the Examiner have any questions or comments concerning the above, the Examiner is respectfully invited to contact the undersigned attorney at the telephone number given below.

The Commissioner is hereby authorized to charge payment of any additional fees associated with this communication, or credit any overpayment, to Deposit Account No. 08-2461. Such authorization includes authorization to charge fees for extensions of time, if

Application No.: 10/803,153
Amendment and Response dated March 15, 2007
Reply to Office Action of December 20, 2006
Docket No.: 760-243 CON II
Page 11

any, under 37 C.F.R. § 1.17 and also should be treated as a constructive petition for an extension of time in this reply or any future reply pursuant to 37 C.F.R. § 1.136.

Respectfully submitted,



John S. Sopko
Registration No.: 41,321
Attorney for Applicants

HOFFMANN & BARON, LLP
6900 Jericho Turnpike
Syosset, New York 11791
(973) 331-1700

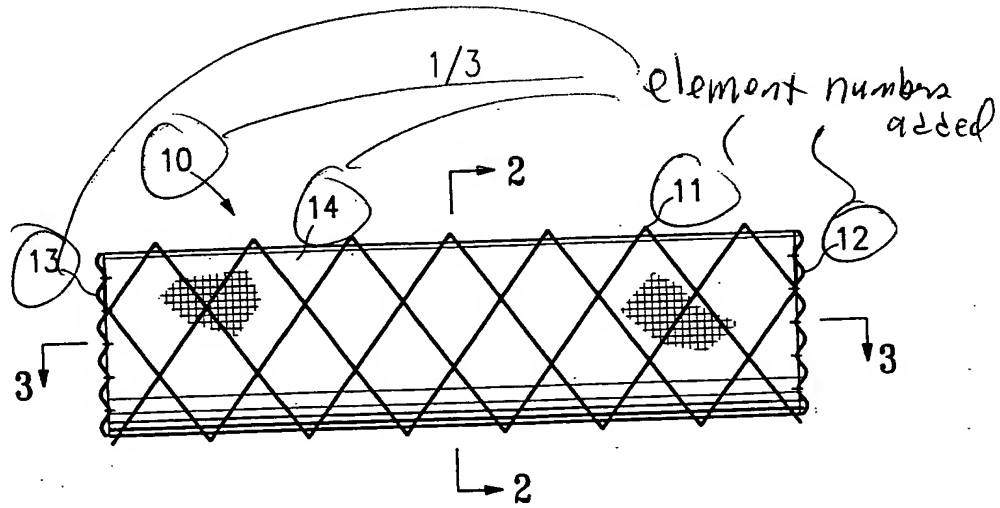


FIG. 1

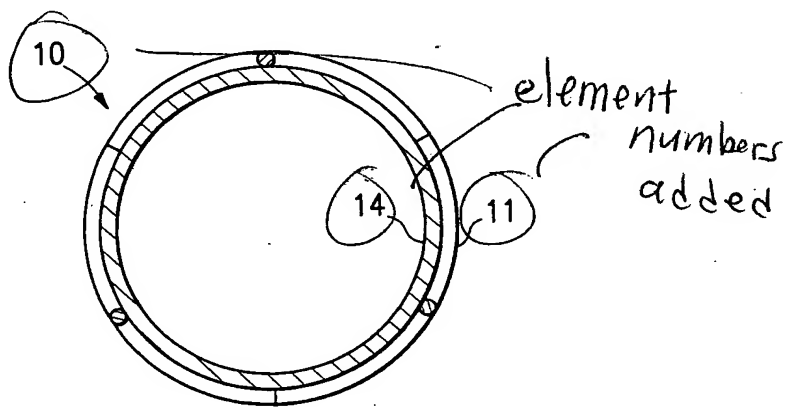


FIG. 2

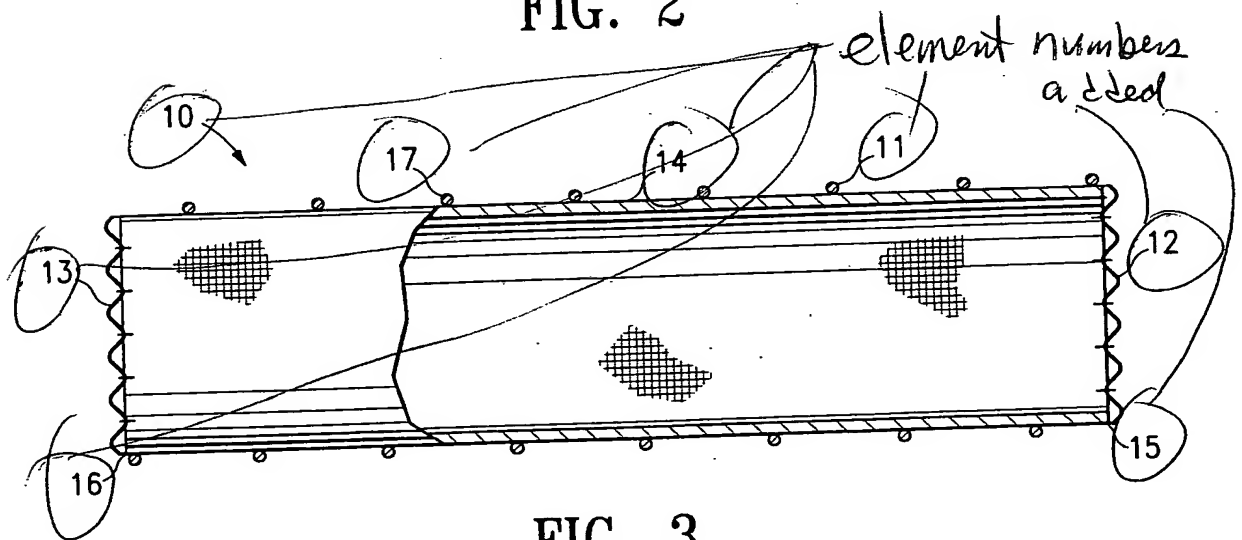
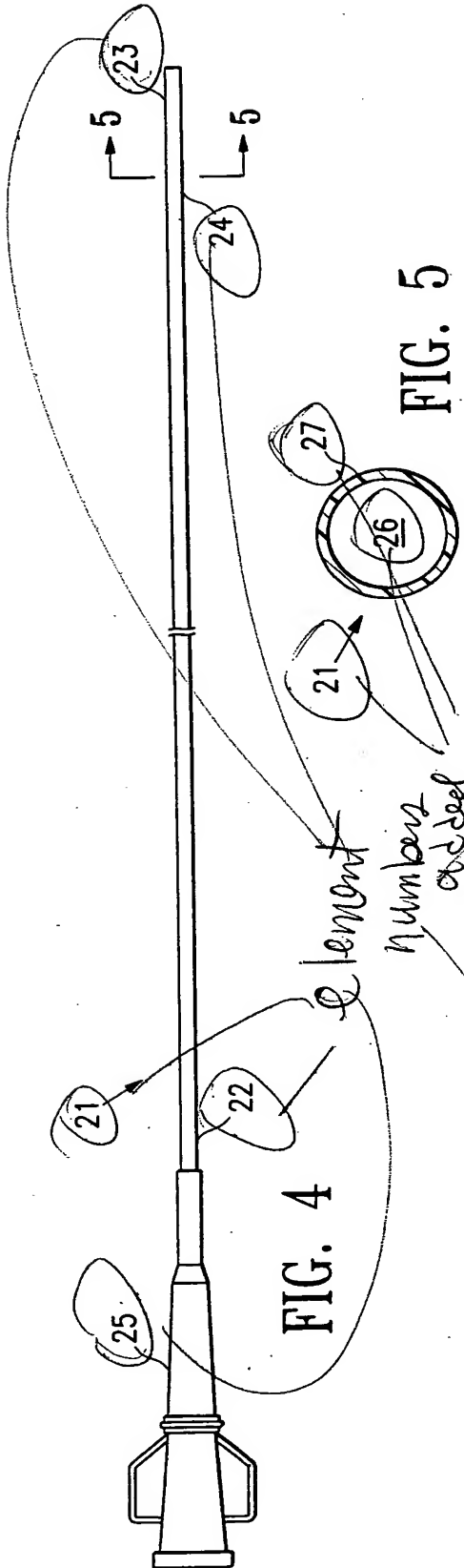


FIG. 3

2/3



element
numbers added

